KOI HUAY KER v. PUBLIC PROSECUTOR

[A Cr. J. (Smith J.) June 30, 1956]

[Malacca — Criminal Appeal No. 11 of 1956]

Emergency (Rubber Control) Regulations, 1949, reg. 4(1) — Unlawful possession of scrap rubber — Necessity of proving that the scrap rubber is marketable.

This was an appeal against the conviction of the appellant on a charge of unlawful possession of scrap rubber. No evidence was adduced at the trial to show that the scrap rubber was "marketable".

Held: on a charge of unlawful possession of scrap rubber it is necessary for the prosecution to prove affirmatively that the scrap rubber is marketable and as this was not done in this case the appeal must be allowed and the conviction quashed.

Cases referred to :—

(1) *Wong Boon Toh v. Public Prosecutor* (Malacca — Criminal Appeal No. 5 of 1956 — unreported).

(2) *R. v. Skeen* (1859), Bell C.C. 97; 28 L.J.M.C. 91.

MAGISTRATE'S CRIMINAL APPEAL.

C. S. Jayaswal for the appellant.

L. A. Massie (Federal Counsel) for the respondent.

Smith J. : — The appellant was charged with an offence against paragraph (1) of regulation 4 of the Emergency (Rubber Control) Regulations, 1949, in the following terms :—

'That you on 19.9.55 at about 5.00 p.m. at shop No. 3232, Nylas Village, in the District of Jasin did unlawfully have in your possession 1½ katties of scrap rubber which may be reasonably suspected of having been stolen and that you have thereby committed an offence under Emergency (Rubber Control) Regulations, 1949.'

At the close of the prosecution case a submission was made that, *inter alia,* there was no evidence before the Court that the scrap rubber the subject of the charge was 'rubber' within the meaning of the definition. No evidence had, in fact, been adduced that the scrap rubber was 'marketable.' This point was one of those taken on appeal. The question therefore arises whether it is necessary, where scrap rubber is the subject of a charge, for the prosecution to prove that it is marketable.

In *Wong Boon Toh v. Public Prosecutor*[1] (Malacca Criminal Appeal No. 5 of 1956), unreported, Good J. held that in respect of unlawful possession of sheets of rubber it is necessary for the prosecution to prove affirmatively that the subject matter of the charge is 'marketable.' That judgment did not consider whether scrap rubber must be proved 'marketable.'

Regulation 4 of the Regulation punishes the unlawful possession of 'rubber': this regulation does not refer expressly to 'scrap rubber.'

Rubber is defined in regulation 2 as follows :—

" 'Rubber' means any marketable rubber prepared from the leaves, bark, latex of any rubber plant, scrap rubber and the latex of any such plant, whether fluid or coagulated, but does not include any manufactured article wholly or partly made of rubber;"

From the grammatical construction of this definition the expression 'rubber' covers three different forms of rubber namely :—

1. prepared rubber
2. scrap rubber; and
3. latex.

The question to be decided is whether the adjective 'marketable' qualifies 'scrap rubber' as well as 'rubber prepared from leaves etc.'

It is grammatically possible to read 'marketable' with 'scrap rubber.' This construction is favourable to the accused and, the regulations being highly penal, it is *prima facie* the interpretation to be followed. It is necessary however to go further than this and see exactly what the legislature intended.

The argument that a law is *prima facie* harsh can be a dangerous one to listen to but whenever the language admits of two constructions and one of these leads to an obvious injustice it is the duty of the Court to adopt the construction which is manifestly just and reasonable. The authorities beginning with *R. v. Skeen*[2] are set out in *Maxwell* 9th edition page 208.

It is clear that by definition unmarketable prepared rubber is not to be considered as rubber. If the adjective 'marketable' is not understood to qualify 'scrap rubber' then the absurd conclusion is reached that the legislature wishes to punish the lawful possession of prepared rubber only when marketable and of scrap rubber whether it is marketable or not.

I cannot see that the legislature intended to punish the unlawful possession of unmarketable scrap rubber while withholding its hand in respect of unmarketable prepared rubber. It follows that it is necessary to prove affirmatively in respect of scrap rubber that such scrap rubber is 'marketable.'

In these circumstances the Court of trial ought to have held that the case had not been proved and ought to have acquitted the accused without calling upon him for his defence. The appeal is allowed, the conviction quashed, the sentence set aside, and the appellant acquitted and discharged.

Appeal allowed.